

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

RALPH E. SWAN,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Civ. No. 05-088-KAJ
	)	
DAVID JONES, JOHN GARRY,	)	
ROBERT O'NEIL, ANDREW	)	
WITHERELL, and JOHN E.	)	
BABIARZ, JR.,	)	
	)	
Respondents.	)	

**O R D E R**

WHEREAS, petitioner has filed this action pursuant to 42 U.S.C. § 1983, and requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915; and

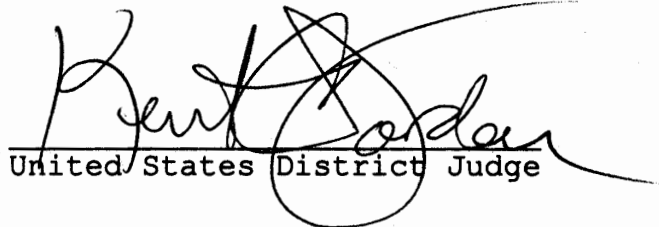
WHEREAS, based on the information in petitioner's affidavit, the request to proceed in forma pauperis is granted; and

WHEREAS, the allegations in the complaint challenge the fact of petitioner's conviction and/or sentence, and thus the Court construes the complaint to be seeking federal habeas corpus relief pursuant to 28 U.S.C. § 2254, see Preiser v. Rodriguez, 411 U.S. 475 (1973); and

WHEREAS, the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), 28 U.S.C. § 2244, effectively precludes petitioners from filing a second or subsequent habeas petition except in the most unusual of circumstances; and

WHEREAS, the United States Court of Appeals for the Third Circuit has mandated that, before ruling on the merits of a petition, a petitioner must be given notice that the AEDPA applies to a pending petition, see United States v. Miller, 197 F.3d 644 (3d Cir. 1999) and Mason v. Meyers, 208 F.3d 414 (3d Cir. 2000).

NOW, THEREFORE, IT IS ORDERED this 1<sup>st</sup> day of March, 2005, that, on or before April 1, 2005, petitioner must file with the Court the attached election form. **Failure to timely return the completed election form will result in the Court's ruling on your pending petition as filed pursuant to 28 U.S.C. § 2254.**

  
United States District Judge

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BABIARZ, JR.,	)	
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**AEDPA ELECTION FORM**

1. \_\_\_\_\_ I understand that the Court has construed my complaint to be filed pursuant to 28 U.S.C. § 2254 and wish the Court to rule on my § 2254 petition as currently pending. I realize that the law does not allow me to file successive or later petitions unless I receive certification to do so from the United States Court of Appeals for the Third Circuit; therefore, this petition will be my one opportunity to seek federal habeas corpus relief.
  
2. \_\_\_\_\_ I understand that the Court has construed my complaint to be filed pursuant to 28 U.S.C. § 2254 and I wish to amend my § 2254 petition to include all the grounds I have. I will do so within thirty (30) days. I realize that the law does not allow me to file successive or later petitions unless I receive certification to do so from the United States Court of Appeals for the Third Circuit; therefore, this amended all-inclusive petition will be my one opportunity to seek federal habeas corpus relief.

3. \_\_\_\_\_ I understand that the Court has construed my complaint to be filed pursuant to 28 U.S.C. § 2254 and I wish to withdraw my § 2254 petition without prejudice to file one all-inclusive petition in the future; that is, one that raises all the grounds I have for federal habeas corpus relief. I realize this all-inclusive petition must be filed within the one-year period as defined by 28 U.S.C. § 2244(d). See Swartz v. Meyers, 204 F.3d 417 (3d Cir. 2000).
4. \_\_\_\_\_ I do not wish the Court to construe my complaint as filed pursuant to 28 U.S.C. § 2254 because I am not seeking federal habeas corpus relief under § 2254. I am instead seeking relief under \_\_\_\_\_.

\_\_\_\_\_  
Petitioner